of the Emergency (Rubber Control) Regulations, 1949, which reads as follows :—

"5. (2) "Any person who, on or after the 6th day of October, 1950, is unlawfully in possession of rubber shall be guilty of an offence and shall, on conviction, be punished by imprisonment for a term of not less than one year and not more than five years."

From the mandatory provisions of the regulation it is clear that if a Court convicts then it must sentence the convicted person to a minimum of one year's imprisonment or to such other term up to 5 years, and I have therefore come to the conclusion that the provisions of section 294(i), Criminal Procedure Code cannot have any application to a case where the Court has convicted a person under regulation 5(2) of these Regulations.

The second submission by the learned Deputy does not therefore arise.

If it is a case, however, where the rubber involved was practically worthless due to its quality and quantity, then I think it would be quite proper for a Magistrate to act under section 173A, Criminal Procedure Code, but at the same time I would draw the attention of the Magistrates to the words of Avory, J. in the case of *Rennie v. Boardman*[1] :—

"On more than one occasion it has been pointed out by this court that the provision in the statute of 1907 does not allow the justices to go to the length of saying that a particular offence created by a statute is, in their opinion, a trifling one, and that therefore they will not put the law into force. It only entitles them to say that when an offence has been committed the circumstances surrounding the whole affair make it an offence of a merely trifling nature."

His Lordship was referring to section 1 of the Probation of Offenders Act, 1907, which corresponds to section 173A(i) of the Criminal Procedure Code.

Lastly I would add that however much the Court may sympathise with a convicted person, it is its duty to see that the law is properly administered as laid down by the legislature and that any feeling of sympathy that may be felt towards the accused person should not affect its decision.

In view of the above, the appeal will be allowed, the sentence of the learned Magistrate will be set aside, and the cash security of $250 repaid to the respondent, and I sentence her to undergo one year's simple imprisonment.

Appeal allowed.

S. MANGALAM v. THE PLANTERS' LOANS BOARD.

[Court of Appeal (Foster Sutton, C.J. (F. of M.), Brown, Ag. C.J. (S.) and Abbott, J.) August 13, 1951]

[Kuala Lumpur — Civil Appeal No. 20 of 1951]

Planters' Loan Board — Whether debt owed to the Board is debt owed to the Government of the Federated Malay States.

The facts and arguments are fully set out in Judgment of the learned trial Judge reported in (1951) M.L.J. 100 and in the Judgment of Foster Sutton, C.J.

Held on appeal, (1) that although the Planters' Loans Fund Enactment provides for a considerable degree of governmental control of the Board, and it was incorporated to operate a fund established with public money and it does in a sense act on behalf of the Government, the legislation confers upon the Board the power of contracting as principals and that the loans with which this Court is concerned are debts to the Board and not to the Government; and (2) that the question raised by the first "agreed issue" should have been answered in the negative.

Cases referred to :—

(1) *Graham v. Public Works Commissioners* (1901) 2 K.B. 781.

(2) *Tamlin v. Hanaford* (1950) 1 K.B. 18.

(3) *International Ry. Co. v. Naigara Parks Commission* (1941) A.C. 342.

APPEAL from the judgment of Wilson, J. reported in (1951) M.L.J. at p. 100.

W. G. W. Hastings for the appellant — defendant.

F. G. Charlesworth for the respondents — plaintiffs.

Cur. Adv. Vult.

Foster Sutton, C.J. : — These proceedings were commenced by way of Originating Summons under which the respondents, the Planters' Loans Board, sought an order for the sale by public auction of certain lands in respect of which the appellant had executed charges for the purpose of securing the repayment of two loans, and interest thereon, made to her by the Board.

For the purpose of the determination of the issues, which were agreed, the parties admitted, *inter alia,* that no payment was made by the appellant on account of principal or interest until the 17th August, 1945, when the sum of $31,189.52 in Japanese occupation currency was voluntarily paid by the appellant to the Japanese Custodian in whom the respondents' property had been vested by order or decree of the Japanese occupation authorities, and that the amount so paid was in purported repayment of the total amount, including

interest, then owing by the appellant to the respondents in respect of the loans.

The first of the "agreed issue" which the learned trial Judge was asked to determine was the question whether the debts owed by the appellant to the respondents, in respect of the two loans, were debts owed to the Government of the Federated Malay States, and he answered that question in the affirmative, an answer favourable to the appellant's contention.

The second "agreed issue" — whether the payment made by the appellant to the Japanese Custodian was, in law and apart from any Enactment brought into force after the 31st day of March, 1946, a good and valid payment of the whole of the debts owed by the appellant on the security of the charges executed by her in favour of the respondents, was also answered in the appellant's favour.

Judgment was, however, given for the respondents, but that result flowed from the fact that the third "agreed issue" was answered in their favour.

It was argued, on behalf of the appellant, that the answer given by the learned trial Judge to the question raised by the third "agreed issue" was wrong, and that the Government is not bound by the Debtor and Creditor (Occupation Period) Ordinance, 1948. If that contention is, and the answers given by the learned trial Judge to the questions raised by the first and second "agreed issues" are, correct, the appellant would have been entitled to judgment.

It was conceded, both at the trial and before us, that the second and third "agreed issues" required to be determined only if the answer to the first one was in the affirmative.

On behalf of the appellant it was argued that in making individual loans the Board were acting as servants or agents of the Government, and that although the Board are given a statutory right to bring proceedings to recover amounts due on loans made by them, upon a proper construction of the Planters' Loans Fund Enactment, which establishes the Board and empowers it to make loans, monies advanced under it are loans made on behalf of, and, consequently, are debts due to, the Government.

Counsel for the respondents, as he was entitled to do, argued to the contrary and submitted that the learned trial Judge ought to have answered the question raised by the first "agreed issue" in the negative.

The appellant relied upon —

(i) the wording of the long title of the Planters' Loans Fund Enactment which reads as follows :—

> "An Enactment to incorporate a Board to manage loans by the Government for agricultural and other purposes and to provide for certain terms of such loans,"

(ii) section 3 which provides that the control and management of the Fund, subject to the provisions of the Enactment, shall be vested "on behalf of the Government" in the Planters' Loans Board, and

(iii) the considerable supervision by officers of the Government which the Enactment provides for, particular reference was made to sections 8, 10, 28 and 32.

A number of authorities were cited by both sides in support of their contentions, but particular stress was held on two cases, *Graham v. Public Works Commissioners*[1] and *Tamlin v. Hanaford*[2]. In the former case it was held that an action lay against His Majesty's Commissioners of Public Works and Buildings, who were incorported by statute, for damages for breach of a contract entered into by them with a firm of builders for the erection of a public building. Ridley J's. judgment in the case was based on the ground that the Commissioners must be taken to have made the contract specially themselves, and not as agents of the Crown, and Phillimore J's. on the ground that the Commissioners are in the position of servants of the Crown who may be sued on their contracts for the purpose of obtaining a judgment declaratory of the rights of the subject who has contracted with them. In the latter case, the Court of Appeal in England held that the British Transport Commission is not a servant or agent of the Crown, that it is a public authority and its purposes are public purposes, but it is not a govenment department, and that its powers do not fall within the province of government; particular reliance was placed by the appellant on a passage in the judgment of the Court, which was delivered by Denning L.J., where he said :—

> "When Parliament intends that a new corporation should act on behalf of the Crown, it as a rule says so expressly, as it did in the case of the Central Land Board by the Town and County Planning Act, 1947."

Sub-section (3) of section 3 of that Act reads :—

> "The functions under this Act of the Board, and of their officers and servants, shall be exercised on behalf of the Crown."

The case of *International Ry. Co. v. Niagara Parks Commission*[3] was also cited in support of the proposition that "the test to apply is whether the Board is properly to be regarded as a servant or agent of the Government when making a loan to an individual".

Section 3 of the Planters' Loans Fund Enactment vests the "control and management of the Fund", established under section 2, in the Board "on behalf of the Government", but it is not clear from the enacting part of the legislation whether it was intended that

individual loans were to be made by the Board as an agent or servant of the Government, in the sense contended for by the appellant, so as to make a loan granted by the Board a debt due to the Government.

Where there is doubt as to the intention of the Legislature, it is legitimate to consider, as materials for a proper construction, the long title and preamble of the Enactment. While it is the case that the long title describes the Enactment as being one "to incorporate a Board to manage loans by the Government", the preamble, the purpose of which is to explain the object and policy of the legislation, recites, *inter alia,* that "it is expedient to vest in a Board to be constituted under this Enactment the rights of the Government in respect of the control and management of loans" made by the Board out of public money set aside for the purpose, "and of the sums which have been and shall be repaid on account thereof".

Section 4 of the Enactment provides that the Board shall be a body corporate, empowers it to hold both moveable and immoveable property, enables it to sue and be sued in all Courts and in all manner of suits and proceedings and to do all other matters and things incidental or appertaining to a body corporate, provided that anything so done is not inconsistent with the provisions of the Enactment.

Section 5 provides that the capital of the Fund shall be paid over to the Board, by the Treasurer to to the Government, in such instalments as may from time to time be necessary, makes provision for the payment by the Board to the Treasurer of a fixed quantum of the interest received by the Board in respect of loans made by it, and authorises it to utilise the balance of such interest for the payment of its expenses and the creation of a reserve fund.

In the light of the Enactment as a whole, I am of the opinion that the position of the Board more closely resembles that of the Commission created by the Transport Act, 1947, than that of the Central Land Board established by the Town and Country Planning Act, 1947.

Although the Planters' Loans Fund Enactment provides for a considerable degree of governmental control of the Board, and it was incorporated to operate a fund established with public money and it does in a sense act on behalf of the Government, I am of the opinion that the legislation confers upon the Board the power of contracting as principals and that the loans with which we are concerned in this appeal are debts to the Board and not to the Government. It follows, therefore, that, in my view, the question raised by the first "agreed issue" should have been answered in the negative.

The conclusion to which I have come on the first "agreed issue" renders it unnecessary to decide the questions raised by the other two.

For the reasons I have given I would dismiss this appeal with costs.

Brown, Ag. C.J. : — I have had the opportunity of reading the judgment of the learned President with which I am in agreement.

Abbot, J. : — I concur.

Appeal dismissed.